

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEHMET AKSOY,)	
)	
Plaintiff,)	C.A. No.
)	
v.)	
)	
SELECTRUCKS OF AMERICA, LLC,)	TRIAL BY JURY DEMANDED
a Delaware limited liability company,)	
)	
Defendant.)	

COMPLAINT

1. The plaintiff is an individual and resident of the State of New York.
2. The defendant is a limited liability company organized under the laws of the State of Delaware.
3. The defendant owns and operates a new and used commercial truck dealership known as SelecTrucks of the Mid-Atlantic (Wilmington, Del.) located at 520 Terminal Avenue, New Castle DE 19720.
4. On or about July 31, 2006, the plaintiff and the defendant entered into a contract in which the plaintiff agreed to buy, and the defendant agreed to sell, a commercial truck, specifically a 2004 Freightliner FLCL-120, VIN No. 1FUJA6CG74LM10966 ("the vehicle").
5. The plaintiff financed the purchase of the vehicle through a finance lease arrangement. Under the terms of the finance lease, the plaintiff is the assignee of the leasing company's rights against the defendant for the claims made in this Complaint. Moreover, pursuant to 6 Del. C. §2A-209, the plaintiff is the beneficiary of all promises and warranties made by the defendant in the sale contract.
6. Pursuant to the terms of the parties' contract, the defendant represented and expressly

warranted to the plaintiff that the vehicle had 320,000 miles on it. The plaintiff relied on that representation and warranty in, among other things, determining the fair sale price of the vehicle, which was \$64,500.00.

7. The defendant's representation and warranty about the mileage on the vehicle was false. In fact, the vehicle had close to 500,000 miles on it, as the defendant plaintiff later learned when he had the vehicle serviced. But for the defendant's representation and warranty about the mileage on the vehicle, the plaintiff would have either paid a substantially lower price for the vehicle, or would not have bought it at all and would have bought a different vehicle.

8. When the plaintiff bought the vehicle, the vehicle's odometer indicated the mileage represented to the plaintiff in the parties' contract. The defendant knew, or had reason to know, that the mileage stated on the odometer was incorrect and that the vehicle had many more miles on it than what was being represented to the plaintiff.

9. Alternatively, the defendant owed a duty to the plaintiff to determine the correct mileage of the vehicle based on the Federal Odometer Act, 49 USC §32705, et seq., and because the defendant had reasonable cause to believe the plaintiff, or any other potential buyer, would rely on that information in making a decision about whether to buy the vehicle and how much to pay for it.

10. The defendant breached the duty stated in the above paragraph by failing to exercise reasonable care in determining the correct mileage on the vehicle and imparting that information to the plaintiff.

11. The delivered vehicle failed to conform to the parties' contract and to the express representation and warranty made by the defendant to the plaintiff.

12. As a direct and proximate consequence of the foregoing, the plaintiff has incurred

liability on the finance lease in the total amount of \$93,981.15, for a vehicle that the plaintiff would not have purchased had he known the true state of the mileage.

13. As a further direct and proximate consequence of the foregoing, the plaintiff has incurred increased costs as a Federal Express contractor, in that he has been unable to use the vehicle for long haul trips, and has had to pay to obtain a substitute vehicle for long haul trips.

14. The plaintiff has contacted the defendant about the allegations made in this Complaint, but thus far the defendant has been unwilling to provide the plaintiff with any relief.

15. The defendant has violated the provisions of the Delaware Consumer Fraud Act (DCFA), 6 Del. C. §2513(a) by misrepresenting the true mileage of the vehicle with the intent that the plaintiff would rely on such misrepresentation.

16. The defendant has violated the provisions of the Federal Odometer Act, 49 U.S.C. §32705, by making a false statement to the plaintiff concerning the mileage on the vehicle with intent to defraud the plaintiff.

WHEREFORE, the plaintiff demands judgment against the defendant as follows:

a) a declaration that the plaintiff has justifiably revoked acceptance of the vehicle under Article 2 of the Uniform Commercial Code;

b) a monetary judgment for plaintiff's direct damages in an amount of not less than \$93,981.15;

c) a monetary judgment for plaintiff's costs in procuring substitute goods;

d) treble damages under the Federal Odometer Act, 49 U.S.C. §32710(a);

e) plaintiff's reasonable attorney's fees under the Federal Odometer Act, 49 U.S.C. §32710(b);

f) pre-judgment interest and post-judgment interest at the legal rate and court costs.

FERRY, JOSEPH & PEARCE, P.A.

/s/Rick S. Miller

Rick S. Miller (#3418)

824 Market Street, Suite 904

P.O. Box 1351

Wilmington, DE 19899-1351

(302) 575-1555

Attorney for Plaintiff

Dated: January 2, 2008

(REV. 07/89)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS Mehmet Aksoy b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>N/A</u> (EXCEPT IN U.S. PLAINTIFF CASES)		DEFENDANT SelecTrucks of America, LLC, a Delaware limited liability company.		
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Rick S. Miller (#3418) FERRY JOSEPH & PEARCE, P.A. 824 Market Street, Suite 904 P.O. Box 1351 Wilmington, DE 19899-1351 (302)575-1555		ATTORNEYS (IF KNOWN) N/A		
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <input type="checkbox"/> 1 U.S. Government <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question <input type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES N/A		
IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY) Federal Odometer Act, 49 USC Sec. 32705 et seq., Delaware Consumer Fraud Act, common law fraud and misrepresentation				
V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-- Med Malpractice <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Property Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Right		

VI. ORIGIN

(PLACE AN x IN ONE BOX ONLY)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred (specify)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

DEMAND \$ 93,981.15

☐ UNDER F.R.C.P. 23
JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S)**

(See instructions)

IF ANY N/A

DATE January 2, 2008

SIGNATURE OF ATTORNEY OF RECORD /s/ Rick S. Miller (#3418)

UNITED STATES DISTRICT COURT

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

08-003

Civil Action No. _____

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2008 JAN -3 AM 10:33

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

1/3/08

(Date forms issued)

Gerald J. Vintigni
(Signature of Party or their Representative)

Gerald J. Vintigni
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action